HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 16280 OF 1996

-

-

Between:

S.V. Ramana

……Petitioner

And

The District Collector, West Godavari,
Eluru and two others

……Respondents

:: ORDER ::

Counsel for the petitioner : Sri Y.V. Ravi Prasad

Counsel for the Respondents : Assistant Government Pleader for Irrigation and Command Area Development

Dated: 21-06-2006

After independence, people living in different parts of the

country have witnessed widespread land grabbing and unchecked encroachments of public lands and properties. People living in every city and town in the country, big or small, have suffered on account of land grabbing and encroachment of public properties. As a consequence of encroachment of public lands and properties, the residents of every urban area have to suffer the agony of long queues of vehicles on the road, traffic chaos, high degree of pollution etc. The cities of the State of Andhra Pradesh are no exception. In every part of the State, the lands earmarked for or sought to be utilized for widening of roads and construction of buildings meant for institutions and public facilities have been encroached by unscrupulous elements. The Courts are also burdened with litigation by the land grabbers and encroachers who question the action taken by the public authorities to re-claim possession of the public properties. Some of the decisions rendered by the Courts, including the famous judgment in **Olga Tellis v. Bombay Municipal Corporation**[1] have been widely misused by those who take law into their hands and grab public properties for seeking protection of illegal encroachments of public lands by invoking Articles 14 and 21 of the Constitution of India and rules of audi alteram partem. In the State of Andhra Pradesh in general, and cities like Hyderabad, Secunderabad, Ranga Reddy, Visakhapatnam, Guntur, East Godavari at Rajahmundry, Vijayawada, a large number of persons involved in grabbing public land and properties have got protection of ad-interim

injunctions passed by the Civil Courts. Some of the judicial officers seem to be totally unmindful to the incalculable injury caused to public interest by grant of injunctions, which protect land grabbers and encroachers. Therefore, it is worthwhile to draw the attention of the members of the subordinate judiciary in the State to the recent judgment of the Supreme Court in **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**[2]. In that case, after a detailed survey of the judicial precedents on the subject, the Supreme Court unequivocally held that the Courts should not protect the possession of those who grab public lands or make encroachment without any semblance of right. The propositions laid down in that case read as under:

1) The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.
2) It is true that in cases relating to orders for demolition of

buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu {91999) 6 SCC 464}** made in a different context:

> "This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to

exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles.

3) Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court."

The aforementioned judgment reflects the Court's realization that undue insistence on the compliance of the rules of natural justice for protecting landgrabbers and encroachers of public land and property has only encouraged them to take law into their own hands. Therefore, it is imperative for the civil courts to be extremely circumspect in granting ad-interim injunctions in favour of the persons who come to the Court for protecting their

unauthorized occupation of public land and properties. In all such cases, the Courts should exercise restraint. The Presiding Officers should take into consideration the element of public interest, apart from other three factors before passing an order of injunction. They should, as far as possible, avoid passing of ex parte order of injunction. I may hasten to add that this should not be construed as a mandate of the High Court not to pass any order of ex parte injunction in any situation.

I have prefaced disposal of the writ petition filed by Shri S.V. Ramana for quashing the action taken by the respondents to evict him from land belonging to the Irrigation and Public Works Department because after perusing the record and hearing learned counsel for the parties I am convinced that the writ petitioner is not entitled to any relief.

In the affidavit filed by him, the petitioner has averred that he is in possession and enjoyment of the site belonging to Public Works Department, Krishna - Eluru Channel Section, Eluru, West Godavari situated between M38/6-7 of Eluru Channel. According to him, the site was leased out to Shri B. Parthasarathi Raju for running an auto workshop. The petitioner has further averred that he in collaboration with Sri Parthasarathi Raju constructed a tin shed over the site in question and started auto repair workshop. Still further, he has averred that the auto repair workshop was closed in 1987 and possession of the site was handed over to him along with the constructed building and presently he is carrying on

business of Refrigerator repairs under the name and style of Raghu Refrigirator Works. The petitioner has alleged that in the garb of implementing the road widening programme undertaken in Eluru Town, the respondents are threatening to dispossess him. He has invoked Articles 14,
19 (1)(g) and 47 of the Constitution for seeking protection of his possession by alleging that other occupants of the public properties are being allotted alternative site, but he is sought to be displaced without allotting alternative site.

In the belated counter filed in the form of affidavit dated 13-6-2006 of Sri J. Venkateswara Rao, Assistant Engineer, Irrigation Section, Eluru, it has been averred that the petitioner has unauthorisedly encroached the public land. Shri Rao has denied the petitioner's assertion that the competent authority had leased out the site to Shri B. Parthasarathi Raju. He has then averred that due to encroachment made by the petitioner, the concerned authorities have not been able to execute the programme for widening of the road. All this is evidenced from paragraphs 2 and 3 of the affidavit of Sri J. Venkateswara Rao, which are reproduced below:

> "It is submitted that the Irrigation Department has never granted any lease to the Petitioner at any point of time and the averments made by the Petitioner that initially the site situated between M38/6-7LB of Eluru Canal is leased out to Sri B. Partha Saradhi Raju expired long back and it was taken back

by the department for widening the road. While Sri B. Partha Saradhi and others were in occupation of the land, vehicular traffic on the NII 5 which passes through the Eluru town and adjacent to the Eluru Canal has increased drastically and this resulted in congestion of traffic which lead to number of accidents. Hence the Government of A.P. have issued G.O.Ms.No.38, dated 13-02-1987 directing the Irrigation Department to hand over 15' wide site from M38/2+330 to M 39/2+330 i.e., from the Jute mill Bridge to Old Bus Stand Bridge and 30' wide site from M39/0+330 to 40/3 i.e. from Old Bus Stand Bridge to East Lock to the Eluru Municipality for laying parks and for formation of roads and for widening of N.II.No.5 passing through the town for avoiding traffic congestion and to avoid misuse of canal bunds. Accordingly in pursuance of the orders of the Government it was decided to evict all the occupants of canal bund and the Assistant Engineer, Krishna Eluru Canal Section, Eluru has issued notices in his letter No.224 G1, dt.26-07-1987 to the said occupant to vacate the site and remove the structures etc., in the site. In the affidavit of the petitioner him self admitted the fact of closure of business being carried out at PWD site by Sri B. Partha Saradhi in 1987. There are no orders either granting the lease or orders of alienation in favour of the petitioner by the Irrigation authorities. Mere payment of taxes to Municipal Corporation do not confer him with any right.

It is submitted that to get rid off the menace of traffic congestion, the road leading to Eluru town along the Krishna Eluru Canal has been widened during 1996-97 and during the course of road widening the portion of the unauthorized structures which were constructed by encroaching the canal bund and causing obstruction for vehicular movement have been dismantled and completed the work of road widening leaving small margin of canal bund for utilization of the same for improvements of Krishna Eluru Canal as per Inland Water Transport (I.W.T) Standards. The Petitioner has encroached the canal margin and running his business by constructing small shop. As a matter of fact, due to eviction of encroachers from canal bund for widening of road, the menace of dumping the garbage by the encroachers on the canal bund in to Krishna Eluru Canal which is also prime source of drinking water to the people of Eluru Town has been controlled to some extent. But on account of encroachment of even small extent of canal margin left exclusively for improvements to canal by the Petitioner and others, lot of inconvenience is being experienced by the Department while carrying out maintenance works to canal and also obstructing vigilance by the Municipal Corporation Eluru to desist the encroachers of canal bund from throwing the garbage and sewage water in to Krishna Eluru Canal. It is submitted that recently the Irrigation Department has given notice to the petitioner

on 25-04-2006.

Hence eviction of all the encroachers of canal bunds is inevitable to safe guard the health of the people as well as farmers who are depended on the Krishna Eluru Canal source for drinking and Irrigation purpose."

The petitioner filed reply affidavit dated 15-6-2006 along with an application of the same date for placing on record some documents to show that as early as in July 1997 and October 1997, Assistant Executive Engineer, Irrigation and Command Area Development, K.E. Canal Section, Eluru had sent communications to him to get the lease renewed. He has relied on receipt dated 22-3-2005 issued by Eluru Municipality as an evidence of deposit of the property tax. A copy of notice dated 7-3-2006 issued by Eluru Municipal Corporation has also been produced by the petitioner to show that he is in possession of the disputed site.

Shri Y.V. Ravi Prasad argued that even though his client does not have any document to show that the property in question was leased out to him by the authorities of the Public Works Department, the Court should protect his possession and construction by directing the respondents not to dispossess him without following the procedure established by law. Learned counsel heavily relied on communications dated 7-7-1997 and 3-10-1997 sent to the petitioner by Assistant Executive Engineer, Irrigation and Command Area Development, Krishna - Eluru Channel Section, Eluru, receipts showing payment of property tax

by the petitioner and notice dated 7-3-2006 issued by Commissioner, Municipal Corporation, Eluru under Sections 399 and 402 of Hyderabad Municipal Corporation Act, 1955 and argued that in view of these documents, the petitioner cannot be treated as unauthorized occupant of public property. He then argued that even if the petitioner is found to have encroached the public land, the Court should direct the respondents to legalise the encroachment because similar encroachments made by others have been regularized.

Learned Government Pleader for Irrigation relied on the averments contained in the affidavit of Sri J. Venkateswara Rao and argued that the petitioner is not entitled to continue his unauthorized occupation of public land. He emphasized that the site was never leased out either to Shri B. Parthasarathi Raju or the petitioner and argued that their status is nothing more than that of an encroacher. Learned Government Pleader then submitted that interim order passed by the court and delay in disposal of the main case should not be made a ground for legitimizing the unauthorised occupation of public land by the petitioner.

I have thoughtfully considered the respective arguments and carefully perused the record. In my opinion, the petitioner is not entitled to any relief under Article 226 of the Constitution of India because he does not have any semblance of right to occupy the disputed site. The mere fact that the concerned public authorities did not take action for removing the unauthorised

encroachment made by the petitioner for some years or that the authorities of Municipal Corporation, Eluru have assessed the building for the purpose of levy of property tax and have accepted the amount deposited by him cannot enure to the petitioner's advantage and justify issue of a writ by the High Court to protect his illegal occupation of public land. The Court can take judicial notice of the fact that in majority of the cases of public lands and illegal occupation thereof, the public authorities turn blind eye. Seldom they take steps and remove the encroachments. During the interregnum, the encroachers succeed in colluding with the ministerial staff of the public bodies and authorities and deposit some amount in order to create evidence for seeking protection of their illegal occupation. The petitioner also resorted to some tactics. He succeeded in depositing some amount as property tax. The concerned authority of the Eluru Municipality accepted the amount without realising that the petitioner is in illegal occupation of the public land. These overt acts of the petitioner are not sufficient to entertain his plea that he was granted lease by the officers of the Irrigation Department and that he has continued to occupy the public land with their tacit consent. Likewise, communications dated 07-07-1997 and 03-10-1997, perusal of which give an impression that the land had been leased to the petitioner some time prior to 1997 are of no help to his cause. Letters dated 7-7-1997 and 3-10-1997 written by Assistant Exectuive Engineer, Irrigation and Command Area Development,

Krishna - Eluru Channel Section, Eluru are indicative of either inadvertent and negligent or collusive acts of the officer concerned. It is beyond apprehension as to how the concerned Assistant Executive Engineer could issue letter dated 7-7-1997 suggesting that the property in question was leased out to the petitioner and how could he issue the second letter for execution of lease agreement. In the context of these letters, I asked the learned counsel to show any order passed or document executed by the competent authority of the Public Works and Irrigation Department by which lease was sanctioned in favour of Sri B. Parthasarathi Raju or the petitioner, but he could not draw my attention to any such document. Therefore, these two letters cannot be made basis for issue of a writ restraining the respondents from taking possession of the public land. To me, this is a clear case of unholy nexus between the petitioner and some of the officers of the Irrigation Department and Eluru Municipality who have helped him to prepare record for protection of his possession. However, as he has failed to produce any semblance of evidence to show that the competent authority had leased out the land to him or that he has any other right to continue to occupy the same, I have no hesitation in dismissing the writ petition.

The petitioner's prayer for regularization of his possession on the premise that similar encroachments have been regularized by the Government deserves to be rejected because it is settled

law that the Court cannot issue a direction to the public authorities to commit an illegality or pass an illegal order simply because in some other case similar illegality has been committed or an illegal order has been passed.

Article 14 of the Constitution of India which is genus of the doctrine of equality declares that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In the last 55 years, the Courts have given different dimensions to the doctrine of equality so as to bring every arbitrary action of the State and its functionaries within the ambit of the Court's power of judicial review. The ever expanding horizon of the equality clause has also encouraged filing of large number of petitions in which the petitioners seek relief solely on the premise that in the case of some other person the public authority has given relief. Till recently, the Courts had enforced equality clause and entertained the claim of such petitioners without going into the question whether the action taken by the State and/or public authority in the other case or order passed in favour of some other person is in consonance with law. But this trend has been reversed by the judgments of the Supreme Court in **Chandigarh Administration v. Jagjit Singh, AIR 1995 SC 705, Secretary, Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35, Gursharan Singh v. New Delhi Municipal Committee, (1996) 2 SCC 459, Faridabad CT. Scan Centre v. D.G. Health Services, (1997) 7 SCC 752 and Style (Dress land)**

v. Union Territory, Chandigarh, (1999) 7 SCC 89.

The facts of **Jagjit Singh**'s case were that the respondents who had given the highest bid for 338 sq. yds plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. The Chandigarh Administration

challenged the order of the High Court by filing petition for special leave to appeal. While reversing the order of the High Court, their Lordships of the Supreme Court observed as under:-

> "We are of the opinion that the basis or the principle, if it be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/ unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the court should direct the appropriate

authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or

otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises)."

In **Secretary, Jaipur Development Authority vs. Daulat Mal Jain** (supra), the Supreme Court held as under:

"The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality

cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In **Gursharan Singh v. New Delhi Municipal Committee** (supra), the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

> "Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law."

In **Faridabad CT. Scan Centre v. D.G. Health Services** (supra), the three Judges Bench of the Supreme Court over ruled the earlier decision of the two Judges Bench and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article

> 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others."

For the reasons stated above, the writ petition is dismissed. Since the petitioner has continued to unauthorisedly occupy the public land for almost 11 years, he is saddled with costs of Rs.11,000/-.

As a sequel to the dismissal of the writ petition, the public authorities are ordained to take immediate steps for getting unauthorised occupation of the public land made by the petitioner vacated forthwith.

At this stage, learned counsel for the petitioner made a statement that his client, who is present in the Court is ready and willing to give an undertaking to handover the vacant possession of the site to the concerned authority of the Irrigation Department and requested that the Court may give him three months time to vacate the site. He also requested that the order for deposit of costs may also be recalled. On being asked by the Court, Sri Y.V. Ravi Prasad filed a letter of undertaking signed by his client together with his affidavit. The letter of undertaking and the affidavit of the petitioner are taken on record and in modification of

the earlier part of this order, the following directions are given:

(1) Within one month from today, District Collector, West Godavari, Eluru should nominate a person for taking possession of the site in question and an information to this effect be sent to the petitioner.

(2) At the end of three months period counted from today, the petitioner shall handover vacant possession of the land to the officer nominated by District Collector, West Godavari, Eluru

(3) The order passed by the Court for forcible eviction of the petitioner and payment of costs shall remain in abeyance for a period of three months.

(4) If the petitioner fails to handover vacant possession of the site at the end of three months period, the respondent shall be entitled to use force for securing vacant possession of the site and, if necessary, demolish the construction raised by the petitioner. In that event, the direction for payment of costs shall automatically get revived.

(5) If the petitioner fails to hand over vacant possession of the site to the officer nominated by the District Collector, West Godavari, Eluru, then the latter shall file a contempt petition under the Contempt of Courts Act, 1971 for initiation of appropriate action against the petitioner.

A copy of this order be sent to all the District Judges in the State for circulation within their respective jurisdiction.

G.S. SINGHVI, CJ

21-06-2006

Note:
Registry is requested to mark L.R. copy.

(By order)
svs
PS to HCJ

---

[1] AIR 1986 SC 180

[2] JT 2006 (11) SC 1